

1  
2  
3  
4  
5  
6  
7 **UNITED STATES DISTRICT COURT**  
8 **SOUTHERN DISTRICT OF CALIFORNIA**  
9

10 RAWCAR GROUP, LLC,

11 Plaintiff,

12 vs.

13 GRACE MEDICAL, INC., PULSE  
14 MEDICAL, INC., PREFERRED  
MEDICAL PRODUCTS, and A&B  
MEDICAL SPECIALTIES, LLC,

15 Defendants.

CASE NO. 13-cv-1105 H (BLM)

**PRETRIAL ORDER**

16  
17 Unless otherwise amended, and absent further order of the Court, the Court  
18 incorporates previous scheduling orders into this pretrial order. Following pretrial  
19 proceedings pursuant to Fed. R. Civ. P. 16 and Civil Local Rule 16.1, and following  
20 a hearing on October 21, 2014, the Court orders:

21 **I. NATURE OF ACTION**

22 This is an action for willful patent infringement. In this case, the Plaintiff is  
23 RawCar Group, LLC d/b/s CFI Medical Solutions (“CFI”) and the Defendants are  
24 Grace Medical, Inc. (“Grace Medical”), Pulse Medical, Inc. (“Pulse Medical”), and  
25 J. Randall Pittman D/B/A Preferred Medical Products and Preferred Medical  
26 Products, LLC (collectively “Preferred Medical”).

27 CFI asserts that two patents exclusively licensed by CFI, U.S. Patent Nos.  
28 8,042,549 (“the ‘549 Patent”) and 8,286,637 (“the ‘637 Patent”) (collectively, “the

1 Patents-in-Suit”), were willfully infringed by Defendants’ C-SHIELD and Lateral  
2 C-Arm Drape products. Defendants asserted that there was no infringement and the  
3 patents were invalid.

4 On summary judgment, the Court granted summary judgment in favor of CFI,  
5 finding that both patents were not invalid and also that both patents were infringed  
6 by Defendants.

7 CFI asserts that the patent infringement was willful, or in other words,  
8 deliberate. CFI also asserts that it is entitled to damages in the form of its lost profits  
9 or a reasonable royalty from Defendants’ infringing sales. CFI further asserts that  
10 the willful infringement and/or litigation misconduct by Defendants renders this an  
11 exceptional case for which the damages may be trebled and attorneys’ fees may be  
12 awarded pursuant to 35 U.S.C. § 285.

13 Defendants deny that the infringement was willful. Defendants also assert  
14 that CFI cannot present evidence of lost profits or a reasonable royalty pursuant to  
15 Fed. R. Civ. P. 26(e) and 37(c). Defendants also deny that the case is exceptional or  
16 that CFI is entitled to treble damages and/or attorneys’ fees.

17 The operative pleadings describing the allegations in this case are:

- 18 • CFI’s First Amended Complaint for Patent, Trademark and  
19 Copyright Infringement (ECF. No. 69);
- 20 • Defendant Grace Medical’s Answer And Counterclaims to  
21 Plaintiff’s Complaint For Patent, Trademark and Copyright  
22 Infringement (ECF No. 19);
- 23 • Defendant Pulse Medical’s Answer And Counterclaims to  
24 Plaintiff’s Complaint For Patent, Trademark and Copyright  
25 Infringement (ECF No. 21);
- 26 • Defendant J. Randall Pittman d/b/a Preferred Medical Products’  
27 Answer and Counterclaims to Plaintiff’s Complaint for Patent,  
28 Trademark and Copyright Infringement (ECF No. 20); and

- Defendant Preferred Medical Products, LLC Answer and Counterclaims to Plaintiff's Complaint for Patent, Trademark and Copyright Infringement (ECF No. 92).

## II. JURISDICTION

This Court has federal jurisdiction over CFI's willful patent infringement claim under 28 U.S.C. §§ 1331 and 1338(a).

Venue is proper in this District under 28 U.S.C. §§ 1391(b), 1391(c), and 1400(b).

## III. ADMITTED FACTS

The following facts are admitted and require no proof:

1. Plaintiff RawCar Group, LLC d/b/a CFI Medical Solutions ("CFI") is a limited liability company organized and existing under the laws of the State of Michigan, having a principal place of business at 14241 Fenton Rd., Fenton, MI 48430.

2. Defendant Grace Medical, Inc. ("Grace Medical") was a Nevada corporation with its principal place of business located at 2620 S. Maryland Ave, # 849, Las Vegas, Nevada, 89109 and a registered office address of 1135 Terminal Way Suite 209, Reno, Nevada.

3. Defendant Pulse Medical, Inc. ("Pulse Medical") is a Georgia corporation with its principal place of business located at 1130 Ada Street Suite B, Blue Ridge, Georgia.

4. Defendant J. Randall Pittman d/b/a Preferred Medical Products ("Preferred Medical") was a sole proprietorship with its principal place of business located at 191 Industrial Dr., Ducktown, Tennessee.

5. Defendant Preferred Medical, LLC ("Preferred Medical") is a limited liability company organized under the laws of Tennessee with its principal place of business located at 191 Industrial Dr., Ducktown, Tennessee.

6. United States Patent No. 8,042,549 ("the '549 patent"), entitled "Sterile

1 Radiological Drape,” issued on October 25, 2011. The named inventor of the ’549  
2 patent is Dr. Serge Kaska.

3 7. United States Patent No. 8,286,637 (“the ‘637 patent”), entitled “Sterile  
4 Radiological Imaging Unit Drape and Method of Providing a Sterile Surface  
5 Therewith,” issued on October 16, 2012. The named inventor of the ’637 patent is  
6 Dr. Serge Kaska.

7 8. Both parties’ responses and objections to requests for admission are  
8 incorporated by reference.

#### 9 **IV. RESERVATIONS**

10 The reservations as to the facts recited in paragraph III above are as follows:

11 None.

#### 12 **V. UNCONTESTED FACTS**

13 The following facts, though not admitted, are not to be contested at the trial  
14 by evidence to the contrary:

15 1. On August 28, 2014, the Court issued an order granting Plaintiff’s  
16 motion for partial summary judgment of infringement of the ‘549 and ‘637 patents.  
17 The Court ruled that “no reasonable jury could find that the accused product does  
18 not have sides, or in fact any of the other claim limitations.” The findings in the  
19 August 28, 2014 order are uncontested for the purpose of trial but not admitted by  
20 Defendants. Only to the extent Defendants will submit evidence of their belief that  
21 they did not infringe the patents-in-suit, the findings in the August 28, 2014 order  
22 regarding infringement are not to be contested at the trial by evidence to the  
23 contrary.

24 2. On August 28, 2014, the Court issued an order granting Plaintiff’s  
25 motion for partial summary judgment of no invalidity of the ‘549 and ‘637 patents.  
26 The Court ruled that “Plaintiff has identified at least three claim limitations present  
27 in the asserted claims and absent from the ’120 Patent reference, and no reasonable  
28

1 jury could find that the '120 Patent anticipates the asserted claims.” The findings in  
 2 the August 28, 2014 order are uncontested for the purpose of trial but not admitted  
 3 by Defendants. Only to the extent Defendants will submit evidence of their belief  
 4 that the patents-in-suit were invalid, the findings in the August 28, 2014 order  
 5 regarding invalidity are not to be contested at the trial by evidence to the contrary.

## 6 **VI. FACTS TO BE LITIGATED**

7  
 8 The following issues of fact, and no others, remain to be litigated upon the  
 9 trial:

10 The parties incorporate herein by reference their memoranda of contentions  
 11 of fact and law (ECF Nos. 177 and 194) as a statement of the contentions at issue at  
 12 trial. As a summary, the following issues of fact remain to be litigated upon the trial:

- 13 1. Whether Defendants’ infringement of the patents-in-suit is willful.
- 14 2. The amount of any reasonable royalty damages.
- 15 3. Whether CFI’s damages are limited by 35 U.S.C. § 287 as to the ‘637  
 16 patent.

## 17 **VII. EXHIBITS**

18  
 19 The exhibits to be offered at the trial, together with a statement of all  
 20 admissions by and all issues between the parties with respect thereto, are as follows:

### 21 **A. Exhibit Lists**

22 Ex. A, Plaintiff’s Amended Trial Exhibits

23 Ex. B, Defendants’ Objections to Plaintiff’s Trial Exhibits

24 Ex. C, Defendants’ Trial Exhibits (ECF No. 194)

1 Ex. D, Plaintiff's Objections to Defendants' Trial Exhibits

2 **B. Exhibit Stipulations**

3  
4 All exhibits that are internal documents of a party are deemed authentic at  
5 trial.

6 **C. Final Exhibit List**

7  
8 The Court reminds the parties to provide separate exhibit lists to the  
9 Courtroom Deputy at the status conference on **October 27, 2014 at 10:30 a.m.**  
10 (Doc. No. 172 at 3.)

11 **VIII. WITNESSES**

12 **A. Plaintiff**

13  
14 Ex. E, Plaintiff's Witness List

15 **B. Defendant**

16  
17 Ex. F, Defendants' Witness List

18 **C. Witness Issues to Which Defendants Would Not Stipulate**

19  
20 The parties must notify opposing parties of the identity and the order in which  
21 they plan to call live witnesses for the next trial day by 7:30 pm the day before.

22 **IX. ISSUES OF LAW**

23 The following issues of law, and no others, remain to be litigated upon the  
24 trial:

25 The parties incorporate herein by reference their memoranda of contentions  
26 of fact and law (ECF Nos. 177 and 178) as a statement of the contentions at issue at  
27 trial. As a summary, the following issues of law remain to be litigated upon the trial:

28 1. Whether Defendants' infringement of the '549, and/or '637 patents is

1 willful.

2 2. Whether CFI is entitled to a reasonable royalty pursuant to 35 U.S.C. §  
3 284.

4  
5 3. Whether CFI's damages for any patent infringement are to be increased  
6 pursuant to 35 U.S.C. § 284.

7 4. Whether CFI is entitled to an order, pursuant to 35 U.S.C. § 283,  
8 permanently enjoining and restraining Defendants from continuing to infringe  
9 and/or inducing infringement of, any asserted claims of the '549 and/or '637  
10 patents.

11 5. Whether CFI should be awarded reasonable attorneys' fees and costs  
12 under 35 U.S.C. § 285 and/or 28 U.S.C. § 1927.

13 6. Whether CFI is entitled to an order that Defendants pay CFI  
14 prejudgment and post-judgment interest at the highest statutory rate on CFI's costs  
15 and attorneys' fees.

16 7. The amount of costs to be awarded to CFI pursuant to 35 U.S.C. § 284  
17 and Fed. R. Civ. P. 54(d)(1).

18 8. Whether CFI is entitled to an order awarding CFI such other and  
19 further relief as may be deemed by this Court to be just and proper.

20 9. To the extent that any of the issues of fact identified above (and on  
21 which CFI bears the burden of proof) might be characterized instead or additionally  
22 as issues of law, such issues are incorporated by reference here as issues of law.

## 23 **X. PARTY ADMISSIONS**

24 The foregoing admission having been made by the parties, and the parties  
25 having specified the foregoing issues of fact and law remaining to be litigated, this  
26  
27  
28

1 order must supplement the pleadings and govern the course of trial in this case,  
2 unless modified to prevent manifest injustice.

### 3 **XI. JURY**

#### 4 **A. Case Tried To Jury**

5 This case will be tried by jury.

#### 6 **B. Jury Issues to Which Defendants Would Not Stipulate**

7 CFI proposes the following procedures for the jury at trial. Defendants object.

8 The Federal Judicial Center tutorial video, "An Introduction to the Patent  
9 System," will be shown to the jury after jury selection but before opening  
10 statements. The video (located at <http://www.youtube.com/watch?v=-q0mLrvw1Yc>  
11 ) teaches: 1) what patents are? 2) why we have them, 3) how people get patents, and  
12 4) why disputes arise that require resolution by a jury. The Court finds that the  
13 video would be helpful to a jury and not unduly prejudicial to either side. The  
14 Court instructs the parties to inform the Court at the hearing on October 27, 2014, at  
15 10:30 a.m., whether the parties agree regarding what portion, if any, of the video to  
16 show to the jury.

17 An agreed juror notebook containing, the patents, and witness sheets will be  
18 made available to the jury. Witness sheets will contain a head shot, the witness's  
19 title, and lines for note taking. Plaintiff is responsible for preparing the juror  
20 notebook and their own witness sheets. Defendants must provide Plaintiff with  
21 their witness sheets for the notebooks.

22 The jurors can take notes and may use their own notes during deliberations.

#### 23 **C. Statement to the Jury**

24 The Court will issue the following statement to the jury regarding the Court's  
25 summary judgment order: "It has been determined that the two patents are valid and  
26 infringed. And you are to assume that for this trial. The three issues before you are  
27 willfulness, actual notice of infringement of the '637 patent, and the reasonable  
28 royalty Defendants must pay Plaintiff."



## XII. BIFURCATION

Plaintiff contends that the trial of this case will not be bifurcated. Defendant contends that the willfulness and damages should be stayed pending the appeal of the liability issue as presented in Defendants' Emergency Motion to Stay (ECF No. 195). Alternatively, Defendants contend that the willfulness issue should be bifurcated. More specifically, Defendants contend that the issue of willfulness should go to the jury only after a determination of willfulness by the Court pursuant to *Bard Peripheral Vascular v. W.L. Gore & Assocs.*, 682 F.3d 1003 (Fed. Cir. 2012) (en banc).

The Court denies the motion to stay and has not authorized an interlocutory appeal under Robert Bosch, LLC v. Pylon Mfg. Corp., 719 F.3d 1305, 1320 (Fed. Cir. 2013). (Doc. Nos. 172 and 196.) The Court has previously advised the parties that the case is going forward. (See id.)

The Court declines to bifurcate the trial. The Court will take evidence on willfulness concurrently with the jury. The Court will determine the first prong of the willfulness inquiry and the jury will determine the second prong of the willfulness inquiry.

///

///

///

///

///

///

///

///

///

///

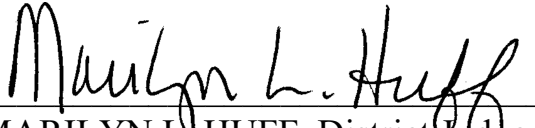
///

**XIII. TIME**

The estimated time for trial is three (3) days. The parties are limited to eight hours per side, all-inclusive. This includes all time spent in trial, including but not limited to opening statements, questioning the jurors, settling jury instructions, and final arguments. The Court limits voir dire to thirty (30) minutes per side. This time counts against the eight hour time limit. If the parties use deposition designations in lieu of live testimony, the Court instructs the parties to submit what percentage of time spent on the deposition testimony each day is attributable to each party to the clerk.

**IT IS SO ORDERED.**

DATED: October 21, 2014

  
MARILYN L. HUFF, District Judge  
UNITED STATES DISTRICT COURT